IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

O.P.No.12807 of 2003(Y)

PETITIONER:-

LIONS CLUB OF COCHIN EAST,
GANDHI NAGAR, COCHIN-682 020,
REPRESENTED BY ITS PRESIDENT
LION AUGUSTINE VANIAMPARAMBIL.

BY ADV. SRI.M.P.RAMACHANDRAN NAIR (SR.)
SRI.DEVAN RAMACHANDRAN

RESPONDENT:-

THE GREATER COCHIN DEVELOPMENT AUTHORITY,
COCHIN-682 020, REPRESENTED BY ITS SECRETARY.

BY STANDING COUNSEL SRI.M.V.JOSEPH.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - COPY OF SALE DEED, DOCUMENT NO.2085/1999 OF ERNAKULAM SUB REGISTRY, DATED 18.5.1999.

EXT.P2 - COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 21.12.1998.

EXT.P3 - RECEIPT DATED 3.12.1998.

EXT.P4 - TRUE COPY OF THE RECEIPT DATED 23.12.1998.

EXT.P5 - COPY OF LETTER OF THE RESPONDENT DATED 18.2.2000 NO.9105/06/GCDA.

EXT.P6 - REPLY LETTER OF THE PETITIONER TO THE RESPONDENT DATED 10.3.2000.

EXT.P7 - COPY OF THE LETTER ISSUED BY THE RESPONDENT NO.9105/C6/GCDA DATED NIL.

EXT.P8 - TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT NO.9106/C6/ GCDA DATED 10.7.2002.

EXT.P9 - TRUE COPY OF JUDGMENT IN O.P.NO.26706/2002(D) ON THE FILE OF THIS HON'BLE COURT DATED 24.9.2002.

EXT.P10 - TRUE COPY OF NOTICE ISSUED TO THE PETITIONER NO.9105/C6/GCDA DATED 30.10.2002.

EXT.P11 - TRUE COPY OF THE LETTER NO.9105/C6/GCDA DATED 17.12.2002 ISSUED TO THE PETITIONER.

EXT.P12 - COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE RESPONDENT DATED 28.1.2003.

EXT.P13 - TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT NO.9105/C6/GCDA DATED 27.3.2003.

RESPONDENT'S EXHIBITS: NIL.

(TRUE COPY)

K.Padmanabhan Nair,J.

O.P.No.12807 of 2003-Y

Dated, this the 5th day of March, 2007

JUDGMENT

The petitioner, Lions Club of Cochin East, purchased a plot of land, measuring 40 cents, from Greater Cochin Development Authority, the respondent herein, in the year 1983 for the purpose of constructing a Community Hall. The property was purchased under a Hire Purchase Agreement. One of the conditions in the agreement was that in case the respondent is held liable for any ehancement in the compensation which is payable to the owners of the land from whom the lands were acquired, that amount will also be met by the purchasers, like petitioner. That clause is extracted in the Original Petition itself. In this case, the respondent issued Exhibit P5 demand to the petitioner claiming an amount of Rs.2,72,880/- as on 29.2.2000 and directed the petitioner to pay that amount before that date. The petitioner did not pay that amount, but the President of the petitioner Club filed Exhibit P6 representation before the respondent to waive that amount. To that letter, respondent

issued Exhibit P7 reply, in which the petitioner was asked to pay an amount of Rs.3,41,152/- as on 31.3.2002. By Exhibit P8 communication, the Secretary of the respondent informed the petitioner that for belated payment interest at the rate of 12% is levied and claimed that amount also. Petitioner filed O.P.No.26706 of 2002 before this Court challenging the aforesaid orders. This Court directed the respondent to quantify the amounts, if any, due from the petitioner and directed the respondent to keep further proceedings in abeyance till a decision is taken in the matter. Respondent issued Exhibit P10 notice to the petitioner asking him to appear for a personal hearing. The respondent issued Exhibit P11 communication also, to which the petitioner sent Exhibit P12 reply. Thereafter the respondent issued Exhibit P13 proceedings stating that the land value due from the petitioner is Rs.2,72,880/- as on 29.2.2000 and in addition to that amount, the petitioner is liable to pay interest at the rate of 12% per annum. It was further stated that though the petitioner was allowed instalment facility, it did not remit any instament. Therefore, by Exhibit P13 the respondent directed the petitioner to remit an amount of Rs.3,73,898/- towards enhanced

land cost dues as on 31.3.2003, which includes interest upto 31.3.2003. Challenging Exhibits P5 and P13, this writ petition is filed.

2. The respondent has filed a counter affidavit stating as to how the land value was calculated. It was also contended that for belated payment, the respondent has to levy interest at the rate of 12% per annum till the date of realisation. It is contended that the respondent is compelled to pay further amount to the original land owners because of the enhancement in the compensation made by this Court in various Land Acquisition Appeals. It is contended that this was the actual amount the respondent had to pay on account of the enhancement in the compensation awarded to the original land owners from whose possession the land was acquired and as per the terms of the agreement, the petitioner is bound to pay the proportionate amount. It is contended that this amount was not claimed from the petitioner alone. In fact, such amounts were claimed from all allottees under the Scheme and in case any amount is waived, that will become a precedent and such claims will be made by large number of similarly situated persons, which

will cause huge financial loss to the respondent.

3. The grievance of the petitioner is that he did not get an opportunity to file objections to Exhibit P13 order issued by the 1st respondent. It is also contended that there is absolutely no justification in claiming interest on the ground that there is delay in payment. It is seen that the petitioner straight away rushed to this Court and filed this Original Petition. Considering the facts and circumstances of this case, it is only just and proper that in case the petitioner has got any objection regarding any amount claimed in Exhibit P13, they can raise that before the respondent. The petitioner can also raise in its objection regarding the levy of interest and also the rate of interest. If such an objection is raised, that is also a matter for the respondent to consider and take a decision. It is submitted that the amount was not paid only because of the interim order passed in this proceedings and the earlier proceedings. It is also submitted that in pursuance of the order passed by this Court in this proceedings, the petitioner has already deposited one-third of the amount claimed in Exhibit P13 and the petitioner is prepared to pay the balance amount. It is submitted that while paying that

balance amount, the respondent may be directed to give credit to the amount already remitted in pursuance of the interim order passed in this case.

4. In this proceedings the disputed questions of fact cannot be considered. It is open to the petitioner to file a statement/objection to Exhibit P13 order within two weeks from the date of receipt of a copy of this judgment. He shall file the statement/objection along with a copy of this judgment before the respondent, who shall consider and dispose of the same in accordance with law within one month from the date of receipt of such statement/objection. It is open to the petitioner to deposit undisputed amount also along with the objection. Until the respondent takes a decision in the matter steps to recover the disputed amount shall stand adjourned.

The Original Petition is disposed of as indicated above. C.M.P.No.21807 of 2003 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-